

Accepting Office

**FIRST AMERICAN TITLE COMPANY OF LOS ANGELES**

Address

**520 N. CENTRAL AVENUE, GLENDALE, CA 91203**

OR#

**9720126-52**

Filing Reference

**INDEMNITY AGREEMENT I**  
(Construction - Mechanics' Lien)THIS AGREEMENT is made and entered into this 28th day of December 1998, by and between**Boeing Realty Corporation, a California corporation formerly known as McDonnell Douglas Realty company, a California corporation**

hereinafter (collectively if more than one) referred to as "Indemnitor," and FIRST AMERICAN TITLE INSURANCE COMPANY, hereinafter referred to as "First American."

1. This Agreement concerns that certain real property, or any interest therein, hereinafter referred to as "the Property," in the County of Los Angeles, State of California, described as:

**SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

2. It is hereby declared that certain improvements (of a character as described in Sections 3102 and/or 3106 of the California Civil Code, relating to Mechanics' Liens) have been or will be commenced upon the Property by or at the direction of Indemnitor. Additional work or improvements have been or will be commenced by other parties including, but not limited to, Vestar Development Co and AutoNation USA Corporation and their affiliates, Mechanic's Liens as to which shall not be covered by this Indemnity.

3. Indemnitor, regardless of his interest in or relationship to the Property, has an interest in the issuance of and desires First American from time to time to issue its policy or policies of title insurance insuring the Property as being free of Mechanics' Liens or the possibility of the filing of claims of Mechanics' Liens arising out of the improvements commenced upon the Property by or at the direction of Indemnitor, and/or insuring holders of mortgages or deeds of trust encumbering the Property against loss by reason of any such Mechanics' Liens which may have or could gain priority over such mortgages or deeds of trust.

4. First American is willing to consider the issuance of such policy or policies of title insurance as Indemnitor shall request, insuring against loss by reason of Mechanics' Liens or the possibility of such Liens being recorded and affecting the property in connection with improvements commenced upon the Property by or at the direction of Indemnitor, however, First American shall determine whether to issue each policy based on reliance on the covenants, conditions, representations and warranties of Indemnitor herein made, and upon a determination by First American that each and every covenant to be performed by Indemnitor has, as a conditions precedent to such issuance, been performed.

IN CONSIDERATION OF THE ISSUANCE by First American of each policy of title insurance as First American shall decide to issue insuring against loss by reason of Mechanics' Liens in connection with improvements commenced upon the Property by or at the direction of Indemnitor, or the possibility that such liens affecting the Property may be recorded, Indemnitor agrees as follows:

5. Indemnitor hereby agrees that all costs, charges, expenses, and/or obligations for labor, materials, and/or services for or in connection with all such improvements shall be paid before the respective times for filing Mechanics' Liens arising out of such improvements. Indemnitor hereby further agrees that a Notice of Completion shall be filed, pursuant to California Civil Code Section 3093 and/or 3117, or under any other applicable law, not before full completion, but within ten (10) days after such improvement has been fully completed.

6. In the event that any Mechanics' Lien or Liens are filed against the Property in connection with improvements commenced upon the Property by or at the direction of Indemnitor, Indemnitor shall, within twenty (20) days of such filing:

- (A) Cause a release of the Mechanics' Lien or Liens to be filed of Record in the County Recorder's Office; or
- (B) Cause to be recorded with respect to any Mechanics' Lien or Liens a bond or bonds conforming to the requirements of Section 3143 of the California Civil Code freeing the Property from the effect of the Mechanics' Lien or Liens. Indemnitor agrees to hold First American harmless and provide a legal defense for any and all liability to any and all policy holders which result or could result from any bond recorded pursuant to Section 3143 being declared invalid or ineffective by a judicial process or from any attempt to establish such invalidity or ineffectiveness; or
- (C) Deposit with First American an amount sufficient in First American's good faith opinion to protect First American or its insured or insureds against such Mechanics' Lien or Liens, which amount First American shall specify; or

(D) Take action with respect to the Mechanics' Lien or Liens as First American shall, in its good faith discretion, authorize indemnitor in writing to undertake, provided that any such authority shall not be a waiver by First American to, at any time, require Indemnitor to comply with any one of subparagraphs A, B, or C herein above set forth, within five (5) days of First American's written revocation of authority to undertake all action pursuant to this subparagraph D and demand for compliance with said subparagraph A, B, or C.

Should Indemnitor fail to comply with subparagraph A, B, C, or D as set forth above, First American is authorized by Indemnitor, but not obligated, to advance and pay such amounts as First American shall, in its good faith discretion, determine to be necessary to procure release of such Mechanics' Lien or Liens, or take such other action which shall otherwise be necessary for First American's insured and First American.

7. In the event that any action is filed at law or in equity relating to any Mechanics' Lien or Liens which affect the Property, for foreclosure thereof or otherwise, Indemnitor hereby agrees to:

(A) Notify First American in writing of such an action which it shall, by any means whatsoever, become aware of within three (3) days of acquisition of its knowledge of the action; and

(B) Cause such action to be defended in a timely manner by counsel who will protect First American and any insured of First American to which First American may have possible liability as a result of issuance of a policy or policies of title insurance with coverage against Mechanic's Liens due to improvements commenced upon the Property by or at the direction of Indemnitor. Provided, however, that notwithstanding Indemnitor's compliance with this paragraph 7, First American may at any time demand in good faith in addition to such performance that Indemnitor also comply with subparagraphs 6A, 6B, or 6C.

In case Indemnitor fails within twenty (20) days of the service upon Indemnitor of a complaint in any such action to cause to be delivered to First American a written representation by Indemnitor's counsel to the effect that such counsel has accepted the defense of such action and will undertake any and all steps necessary to protect First American and its insured, First American shall have the right, but not the obligation, to take or do any act in connection with the litigation which, in its good faith discretion, may be necessary or desirable in order to protect its interest under the Agreement, or the interests of its insured.

8. Notwithstanding any other recourse available to First American under this Agreement, or otherwise at law or in equity, Indemnitor (and each of them jointly and severally if more than one) hereby agree to hold and save First American harmless, and to protect and indemnify First American from and against any and all liabilities or claims of liability, losses, costs, charges, expenses and damages of any kind or character whatsoever, including reasonable attorney's fees incurred or sustained by First American, by reason of or arising out of any Mechanics' Lien or Liens or claims to such Lien or Liens in connection with improvements commenced upon the Property by or at the direction of Indemnitor, which First American may sustain or incur in any other action at law or in equity under any theory of recovery as a result of the existence of or claim of right to a Mechanics' Lien or Liens affecting the Property in connection with improvements commenced upon the Property by or at the direction of Indemnitor.

9. Indemnitor agrees that any monies advanced by First American pursuant to this agreement or by First American's exercise of any rights hereunder given shall be repaid by Indemnitor to First American, with interest thereon at four percent (4%) above the then prevailing prime rate as charged by Bank of America at date of the advance of any sum or sums hereunder, but in no event to exceed ten percent (10%) per annum, from the date of such advance, within ten (10) days of First American's demand therefor.

10. Indemnitor further agrees that any monies or other security deposited with First American may without any demand or notice to Indemnitor whatsoever be used by First American to discharge any liability for which First American is indemnified hereunder, including but not limited to using any portion, up to the whole thereof, of any monies or security to obtain release of such Mechanics' Lien or Liens as may be recorded or to obtain a bond such as will remove the effect of such Lien or Liens against the Property.

11. Where, in First American's good faith opinion, all matters for which First American is indemnified hereunder are resolved in such a manner that First American can have no further Mechanics' Lien liability under its policy or policies First American may, at First American's sole option, return, or order, such monies or security as may have been deposited by Indemnitor hereunder to Indemnitor. No return of such security shall be construed as a termination of Indemnitor's duties hereunder or of this agreement.

12. Indemnitor recognizes and acknowledges that in the event of any default or failure by Indemnitor to perform as agreed herein would give First American the right to exercise any and all remedies available at law or in equity including but not limited to injunctive relief, specific performance, and damages for breach of the terms hereof.

13. The failure of First American to demand by Indemnitor the performance of any act hereunder shall not be construed as a waiver of First American's right to demand, at any subsequent time, such performance.

14. This agreement is between Indemnitor and First American only, and is not intended to be, nor shall it be construed as being for the benefit of any third party or parties.

15. In the event any provision of this agreement shall be held invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. This agreement contains the entire agreement of the parties, and shall not be modified except by an instrument in writing executed by all of the parties hereto.

17. A. The terms in this agreement shall have the following meaning unless the context requires otherwise:

- (1) The term "improvements" refers to and includes site improvements and/or works of improvement of a character described in Sections 3102 and 3106 of the California Civil Code.
- (2) The term "Mechanics' Lien" shall refer to and include any and all liens as presently provided for in Chapter 2, Title 15, Part 4, Division Third of the California Civil Code and any and all claims of such Mechanics' Lien.
- (3) The term "Property" shall refer to that certain property or an interest therein as set out above, and include any and all portions thereof.
- (4) The term "policy" shall refer to and include a policy or policies of title insurance and/or endorsements thereto.

B. Where more than one person (as defined generally in Section 175 of the Evidence Code) is included as Indemnitor, the obligation undertaken by Indemnitor shall be joint and several.

C. The singular number shall include the plural number throughout this agreement.

D. This agreement shall inure to the benefit of and bind the personal representatives, successors, and assigns of the parties hereto.

18. This agreement shall be interpreted in accordance with the laws of the State of California. If any action at law or in equity is necessary to enforce or interpret the terms of this agreement, Indemnitor the non-prevailing parties shall reimburse the prevailing party for any costs, reasonable attorney's fees, and/or necessary disbursements for such action, in addition to any other relief to which the prevailing party may be entitled.

19. NOTWITHSTANDING ANY POSSIBLE DIFFERENCE IN THE PARITY OF THE PARTIES HERETO, IT IS UNDERSTOOD BY INDEMNITOR THAT FIRST AMERICAN IS UNDERTAKING A RISK SIGNIFICANTLY GREATER THAN THAT UNDERTAKEN IN THE NORMAL COURSE OF PROVIDING TITLE INSURANCE POLICIES AND RELATED SERVICES BY ENTERING INTO THIS AGREEMENT AND ISSUING POLICIES OF TITLE INSURANCE IN RELIANCE HEREON AND, THEREFORE, INDEMNITOR HEREBY DECLARES ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND INDUCING FIRST AMERICAN TO ENTER INTO THIS AGREEMENT, REALIZING THAT INDEMNITOR'S BEST INTEREST, IN THE OPINION OF INDEMNITOR, IS BEING BEST SERVED THEREBY.

INDEMNITOR

ENTITIES

Boeing Realty Corporation, a California corporation, formerly known as Mc Donnell Douglas Realty Company, a California corporation

INDIVIDUALS

By:

STEPHEN J. BARKER  
DIRECTOR-BUSINESS OPERATIONS

FIRST AMERICAN TITLE INSURANCE COMPANY

BY

Authorized Officer

Nona Thavaj  
Vice President  
Major Projects Division

NT:ced

Approval Date:

THE PARTIES AGREE THAT A FACSIMILE OF THIS DOCUMENT IS DEEMED TO BE AS VALID AS THE ORIGINAL.